

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

FRANCISCO GUERRA

Plaintiff,

-v.-

9:08-cv-405
(GLS)(DEP)

DONALD SELSKY, Director,
DOCS, Inmate Disciplinary/Special
Housing, individually and in their
official capacity, et al.

Defendants.

APPEARANCES:

OF COUNSEL:

FRANCISCO GUERRA
89-A-1367
Marcy Correctional Facility
P.O. Box 3600
Marcy, New York 13403

HON. ANDREW M. CUOMO
Office of the Attorney General
State of New York
The Capitol
Albany, New York 12224

KRISTA A. ROCK
Assistant Attorney General

GARY L. SHARPE, U.S. DISTRICT JUDGE

ORDER

This action was commenced by plaintiff Francisco Guerra ("plaintiff" or "Guerra") on April 14, 2008. The death of plaintiff was suggested on the record by a notice filed March 23, 2010 by the Office of the New York State Attorney General (the "Attorney General's Office"). See *Dkt. No. 38*.

Rule 25(a) of the Federal Rules of Civil Procedure sets forth the procedure to be followed for the substitution of parties upon the death of a party. Rule 25(a)(1) provides that a motion for substitution may be filed by any party or by the “successors or representatives of the deceased party.” If a motion for substitution is not filed within ninety days after the death of a party has properly been suggested upon the record, “the action shall be dismissed as to the deceased party.”

It has been more than ninety (90) days since defendants’ counsel filed the suggestion of death on the record. *See Dkt. No. 38.* During such time, no person has filed a motion for substitution nor requested an extension of time to file a motion for substitution. Therefore, this case must be dismissed for failure to prosecute.

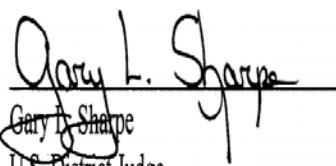
WHEREFORE, it is hereby

ORDERED, that this case be dismissed for failure to prosecute, and it is further

ORDERED, that the Clerk serve a copy of this Order on the parties by regular mail.

IT IS SO ORDERED.

Dated: July 14, 2010
Albany, New York



Gary L. Sharpe
U.S. District Judge